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EX-PARTE COMMENTS

November 16, 1994

Mr. William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt
Regulations for Automatic Vehicle Monitoring Systems; PR Docket No. 93-61

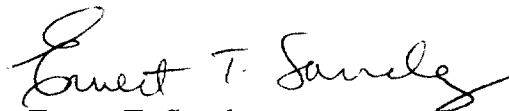
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Dear Mr. Caton:

Enclosed, on behalf of Rand McNally & Company, are an original plus nine (9) copies
of Ex-Parte Comments in the above-captioned matter.

If you have any questions about this matter, please let me know.

Sincerely,



Ernest T. Sanchez
Counsel for
Rand McNally & Company

ETS:ck

Enclosures

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EX-PARTE COMMENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to Adopt)
Regulations for Automatic)
Vehicle Monitoring Systems)

PR Docket No. 93-61

EX-PARTE COMMENTS OF RAND McNALLY & COMPANY

Rand McNally & Company ("RMC") is the copyright owner of the MTA/BTA Listings, embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its Commercial Atlas & Marketing Guide (the "MTA/BTA Map")¹. We understand that certain parties with an interest in this proceeding are urging, and the Commission is considering, mandating use of RMC's MTAs and BTAs as geographic boundaries for service areas for licensing Automatic Vehicle Monitoring (AVM) systems. We submit these Comments to assert our strong objection to any attempt to make RMC's

¹The MTA/BTA Listings and the MTA/BTA Map are referred to collectively herein as the "MTA/BTA Listings."

MTAs and BTAs the geographic boundaries for licensing AVM systems, without a license from RMC.²

I. RMC HAS NOT LICENSED USE OF ITS MTA/BTA LISTINGS IN CONNECTION WITH AVM SYSTEMS.

The MTA/BTA Listings are valuable intellectual property. RMC has made substantial investment in their development.

RMC has *not* licensed the MTA/BTA Listings in connection with AVM systems.

RMC has licensed use of its MTA/BTA Listings for use only in connection with the following services:

(i) 2 GHz broadband Personal Communications Services ("PCS"), as authorized in GEN Docket 90-314 or any successor proceedings;

(ii) 900 MHz narrowband PCS, as authorized in GEN Docket No. 90-314 and ET Docket 92-100 or any successor proceedings;

(iii) 800 MHz wide-area Specialized Mobile Radio Services or Expanded Mobile Service Providers, as authorized in PR Docket No. 93-144 or any successor proceedings; and

² We file comments at this juncture, after the close of the formal comment period, because the proposed use of MTAs and BTAs for AVM systems only recently came to our attention. When we notified the Commission of our license agreement with PCIA (see discussion, *infra*), it was our understanding that the Commission would notify us before proceeding with use of the MTAs and BTAs for any services not embraced in that license. While we assume that the Commission does not intend to proceed here without RMC's assent, we have concluded (in light of developments in other proceedings), that it is advisable to place our objections on the record in proceedings of which we are currently aware that involve services not covered by our license where use of the MTA/BTA Listings appears to be under consideration, for the benefit of the Commission and of parties interested in those proceedings.

(iv) Local Multipoint Distribution Services, as authorized in CC Docket No. 92-297 or any successor proceedings.

RMC first learned late last year that the Commission was considering use of its MTAs and BTAs as the geographic boundaries for certain types of personal communications services. We objected, explaining that the Commission could not adopt these boundaries without RMC's consent, as the MTA/BTA Listings are protected by copyright and such action would constitute an unlawful taking of RMC's property.

Subsequently RMC was approached by PCIA, the Personal Communications Industry Association. PCIA sought, and RMC granted, a blanket license so that all parties with an interest in the FCC proceedings specified in the license would be permitted to reproduce and use the MTA/BTA Listings *only in connection with those proceedings*, subject to the terms of the license. The license made the MTA/BTA Listings available in various forms to the Commission and to interested parties either directly from RMC, or indirectly through its licensees under the license.

Promptly upon execution of the license agreement, we advised the Commission of our license with PCIA, and of our consent to use of the MTA/BTA Listings in the proceedings

specified in the agreement, but only in those proceedings.³ We indicated then that we were willing to license the MTA/BTA Listings on reasonable terms for use in other proceedings, if the parties with an interest in those proceedings sought such a license. No party has yet sought a license from RMC to use the MTA/BTA Listings in connection with AVM systems.

II. THE COMMISSION MAY NOT MAKE MTAs THE GEOGRAPHIC BOUNDARIES FOR AVM SYSTEMS WITHOUT RMC'S CONSENT

The parties advocating use of the MTAs and BTAs as geographic boundaries for AVM systems are, in effect, urging the Commission to engage in an unlawful taking of RMC's property. The Commission has no authority to proceed without RMC's consent. The MTA/BTA Listings represent a significant investment on RMC's part. RMC did not seek to have the MTAs or BTAs used as the geographic boundaries for communications services. If the Commission mandates use of the MTAs and BTAs absent a license by RMC, it will amount to an unlawful taking of RMC's property. All parties to the relevant proceedings, and anyone with an interest therein, will contend that they may reproduce, adapt, and distribute the MTA/BTA Listings and MTA/BTA Map, effectively removing the copyright protection from these works. Moreover, the Commission will itself be an infringer of copyright.

³ In another context, the Commission has recognized RMC's copyright rights in the MTA/BTA Listings, and that RMC's license with PCIA extends only to certain services. *In re Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Third Report and Order (adopted August 9, 1994; released Sept. 23, 1994) at 57 n. 197, 64 n. 218.

We urge the Commission not to adopt MTAs or BTAs as the geographic boundaries for licensing AVM systems — or, indeed, any other services not covered by RMC's existing license — until after a license from RMC has been obtained. If the parties are unwilling to enter into a license with RMC, then the Commission should select different geographic boundaries for the AVM systems.

We remain willing to license use of the MTA/BTA Listings on reasonable terms so that all parties affected by and interested in Commission proceedings may reproduce, modify and distribute them. But RMC will not permit its property to be appropriated without just compensation and due process of law, and will take all necessary steps to remedy any unauthorized exercise of its copyright rights by the Commission or any other party.

III. CONCLUSION

We urge the Commission to refrain from jeopardizing RMC's copyright rights. The Commission should not mandate RMC's MTAs or BTAs as geographic boundaries for licensing AVM systems or for any other service not covered in advance by a license from

RMC. If the parties are unwilling to enter a license, the Commission should select alternative geographic boundary definitions.

Respectfully submitted,

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Dated: November 16, 1994